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22 ViaSat, Inc.

23 **UNITED STATES DISTRICT COURT**  
24 **SOUTHERN DISTRICT OF CALIFORNIA**

25 **ViaSat, Inc.,** ) Case No.: 3:16-cv-00463-BEN-JMA  
26 *a Delaware corporation,* )  
27 Plaintiff )  
28 and Counter Defendant, ) **Plaintiff ViaSat, Inc.'s Motion to File**  
v. ) **Under Seal: (a) Portions of ViaSat,**  
Defendant ) **(b) Opposition to Acacia**  
and Counter Claimant, ) **Communications, Inc.'s Motion for**  
)) **Summary Judgment Regarding No**  
)) **Liability, and (b) Exhibits to the**  
)) **Declaration of Kenneth M. Fitzgerald**  
**Acacia Communications, Inc.,** )  
*a Delaware corporation,* ) Date: February 26, 2018  
Defendant ) Time: 10:30 a.m.  
and Counter Claimant, ) Place: Courtroom 5A  
)) 221 West Broadway

1 ) San Diego, CA 92101  
2 ) Dist. Judge: Hon. Roger T. Benitez  
3 ) Hon. Magistrate Jan M. Adler  
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5 ) Case Initiated: January 21, 2016  
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## I. Introduction

Plaintiff and Counter Defendant ViaSat, Inc. (“ViaSat”) respectfully requests that the Court file under seal (a) portions of ViaSat, Inc.’s Opposition to Acacia Communications, Inc.’s Motion for Summary Judgment Regarding No Liability, and (b) exhibits 5-39 to the Declaration of Kenneth M. Fitzgerald in support of the Opposition.

ViaSat is compelled by the terms of the Stipulated Protective Order §1 (Dkt. No. 29) to bring this motion as to all the evidence designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” However, ViaSat believes some of the exhibits and testimony designated by Acacia are not proprietary or confidential to warrant sealing, particularly under the standard for sealing applied to summary judgment motions. ViaSat may seek to unseal certain evidence in support of its opposition, after meeting and conferring with Acacia over this issue.

## II. Argument

“A strong presumption of access to judicial records applies fully to dispositive pleadings and their attachments.” *Algarin v. Maybelline, LLC*, 2014 WL 690410 at \*2 (S.D. Cal. Feb. 21, 2014). To warrant a request to seal, “compelling reasons” to seal the documents must exist. *Id.*; *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Relevant factors include the “public interest in understanding the judicial process and whether disclosure of the material could result in improper use.” *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 679 fn. 6 (9th Cir. 2010). Documents are properly filed under seal where disclosure would force a party to disclose trade secrets or other valuable confidential and proprietary business information. See, e.g., *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *In re Electronic Arts, Inc.*, 298 Fed. Appx. 568, 569 (9th Cir. 2008); *Bauer Bros. LLC v. Nike, Inc.*, 2012 WL 1899838, at \*4 (S.D. Cal. May 24, 2012) (granting request to seal non-public, confidential financial data, including customer listings, accounting methods,

1 and cost analysis).

2 ViaSat has compelling reasons to file under seal because the information  
3 ViaSat seeks to seal has been identified as confidential by Acacia and ViaSat, and  
4 includes the parties' confidential business, technical, and financial information,  
5 including ViaSat's asserted trade secrets. Publicly filing the information would  
6 prejudice ViaSat and Acacia by revealing business, technical, and financial  
7 information that could be used for competitive advantage outside of this case.  
8 Therefore, there are compelling reasons to seal this information.

9 Here, ViaSat seeks to seal the following documents:

10 a) Portions of ViaSat, Inc.'s Opposition to Acacia Communications, Inc.'s  
11 Motion for Summary Judgment Regarding No Liability (the  
12 "Opposition"). ViaSat's Opposition references confidential  
13 information derived from documents that Acacia and/or ViaSat  
14 designated as "Highly Confidential – Attorneys' Eyes Only" under the  
15 Stipulated Protective Order. The documents contain business,  
16 technical, and financial information that the parties have identified as  
17 confidential, including trade secrets. In the publicly filed version of  
18 ViaSat's Opposition, references to the confidential information have  
19 been redacted;

20 b) Exh. 5 to the Declaration of Kenneth M. Fitzgerald in support of the  
21 Opposition ("Fitzgerald Dec.") is a copy of excerpts of the August 10,  
22 2017 deposition transcript of Acacia employee Gary Martin. The  
23 deposition transcript contains business and technical information that  
24 Acacia designated as Highly Confidential – Attorneys' Eyes Only.

25 c) Exh. 6 to the Fitzgerald Dec. is a copy of excerpts of the August 9,  
26 2017 deposition transcript of Acacia employee Pierre Humblet. The  
27 deposition transcript contains business and technical information that  
28 Acacia designated as Highly Confidential – Attorneys' Eyes Only.

1           d) Exh. 7 to the Fitzgerald Dec. is a copy of excerpts of the August 11,  
2           2017 deposition transcript of Acacia employee Peter Monsen. The  
3           deposition transcript contains business and technical information that  
4           Acacia designated as Highly Confidential – Attorneys’ Eyes Only.

5           e) Exh. 8 to the Fitzgerald Dec. is a copy of excerpts of the October 11,  
6           2017 deposition transcript of Acacia employee Christian Rasmussen.  
7           The deposition transcript contains business and technical information  
8           that Acacia designated as Highly Confidential – Attorneys’ Eyes Only.

9           f) Exh. 9 to the Fitzgerald Dec. is a copy of excerpts of the August 16,  
10          2017 deposition transcript of Acacia employee Benny Mikkelsen. The  
11          deposition transcript contains business and technical information that  
12          Acacia designated as Highly Confidential – Attorneys’ Eyes Only.

13          g) Exh. 10 to the Fitzgerald Dec. is a copy of excerpts of the August 8,  
14          2017 deposition transcript of Acacia employee Lawrence Pellach. The  
15          deposition transcript contains business and technical information that  
16          Acacia designated as Highly Confidential – Attorneys’ Eyes Only.

17          h) Exh. 11 to the Fitzgerald Dec. is a copy of excerpts of the September  
18          28, 2017 deposition transcript of Acacia employee Bhupendra Shah.  
19          The deposition transcript contains business and technical information  
20          that Acacia designated as Highly Confidential – Attorneys’ Eyes Only.

21          i) Exh. 12 to the Fitzgerald Dec. is a copy of excerpts of the July 26, 2017  
22          deposition transcript of ViaSat’s Vice President and General Manager  
23          of ViaSat-Cleveland. The deposition transcript contains business and  
24          technical information that ViaSat designated as Highly Confidential –  
25          Attorneys’ Eyes Only.

26          j) Exh. 13 to the Fitzgerald Dec. is a copy of excerpts of the December  
27          15, 2017 deposition transcript of Acacia expert Dr. Richard Koralek.  
28          The deposition transcript contains business and technical information

1                   that Acacia designated as Highly Confidential – Attorneys’ Eyes Only.

2       k)           Exh. 14 to the Fitzgerald Dec. is a copy of excerpts of the December

3                   11, 2017 deposition transcript of Acacia expert Alexander Vardy. The

4                   deposition transcript contains business and technical information that

5                   Acacia designated as Highly Confidential – Attorneys’ Eyes Only.

6       l)           Exh. 15 to the Fitzgerald Dec. is a copy of excerpts of the December 8,

7                   2017 deposition transcript of ViaSat expert Dr. Krishna Narayanan.

8                   The deposition transcript contains business and technical information

9                   that ViaSat designated as Highly Confidential – Attorneys’ Eyes Only.

10      m)          Exh. 16 to the Fitzgerald Dec. is a copy of excerpts of the December 6,

11                  2017 deposition transcript of ViaSat expert Dr. Marwan Hassoun. The

12                  deposition transcript contains business and technical information that

13                  ViaSat designated as Highly Confidential – Attorneys’ Eyes Only.

14      n)          Exh. 17 to the Fitzgerald Dec. is the October 27, 2017 Expert Report

15                  of Professor Krishna Narayanan, which was designated by ViaSat as

16                  Highly Confidential – Attorneys’ Eyes Only. The report contains

17                  discussion of ViaSat’s trade secrets and Acacia’s accused products as

18                  well as business and technical information the parties have designated

19                  as confidential.

20      o)          Exh. 18 to the Fitzgerald Dec. is the November 21, 2017 Expert

21                  Report of Dr. Alexander Vardy, which was designated by Acacia as

22                  Highly Confidential – Attorneys’ Eyes Only. The report contains

23                  discussion of ViaSat’s trade secrets and Acacia’s accused products as

24                  well as business and technical information that the parties have

25                  designated as confidential.

26      p)          Exh. 19 to the Fitzgerald Dec. is the October 27, 2017 Expert Report

27                  of Dr. Marwan Hassoun, which was designated by ViaSat as Highly

28                  Confidential – Attorneys’ Eyes Only. The report contains discussion

1 of ViaSat's trade secrets and Acacia's accused products as well as  
2 business and technical information that the parties have designated as  
3 confidential.

4 q) Exh. 20 to the Fitzgerald Dec. is the October 27, 2017 Expert Report  
5 of Dr. Stephen Prowse, which was designated by ViaSat as Highly  
6 Confidential – Attorneys' Eyes Only. The report contains discussion  
7 of ViaSat's trade secrets, business, technical, and financial information,  
8 which ViaSat has designated as confidential. The report also contains  
9 discussion of Acacia's business and financial information, which Acacia  
10 has designated as confidential.

11 r) Exh. 21 to the Fitzgerald Dec. is ViaSat's Amended Trade Secret  
12 Designation, which ViaSat designated as Highly Confidential –  
13 Attorneys' Eyes Only. The document contains discussion of ViaSat's  
14 trade secrets, which constitute technical information that ViaSat has  
15 identified as confidential.

16 s) Exh. 22 to the Fitzgerald Dec. is Acacia's Supplemental Responses to  
17 ViaSat's Requests for Admission, which ViaSat designated as Highly  
18 Confidential – Attorneys' Eyes Only. The document contains  
19 discussion of ViaSat's trade secrets, which constitute technical  
20 information that ViaSat has identified as confidential.

21 t) Exh. 23 to the Fitzgerald Dec. is a low level technical specification for  
22 the Everest Encoder. ViaSat produced this specification during  
23 discovery. The specification contains technical information that ViaSat  
24 has designated as Highly Confidential – Attorneys' Eyes Only under  
25 the Stipulated Protective Order, including ViaSat's trade secrets.

26 u) Exh. 24 to the Fitzgerald Dec. is a low level technical specification for a  
27 product on which Acacia has not paid a royalty. Acacia produced this  
28 specification during discovery. The specification contains technical

1 information that Acacia has designated as Highly Confidential –  
2 Attorneys' Eyes Only under the Stipulated Protective Order.

3 v) Exh. 25 to the Fitzgerald Dec. is a low level technical specification for a  
4 product on which Acacia has not paid a royalty. Acacia produced this  
5 specification during discovery. The specification contains technical  
6 information that Acacia has designated as Highly Confidential –  
7 Attorneys' Eyes Only under the Stipulated Protective Order.

8 w) Exh. 26 to the Fitzgerald Dec. is a June 15, 2009 email between  
9 Christian Rasmussen, Russell Fuerst, and Benny Mikkelsen, which  
10 Acacia designated as Highly Confidential – Attorneys' Eyes Only. The  
11 email contains discussion of Acacia's business and technical  
12 information, which Acacia has identified as confidential.

13 x) Exh. 27 to the Fitzgerald Dec. is a June 12, 2009 email between Russell  
14 Fuerst and Christian Rasmussen, along with an attachment, which  
15 Acacia designated as Highly Confidential – Attorneys' Eyes Only. The  
16 email and attachment contain discussion of Acacia's business and  
17 technical information, which Acacia has identified as confidential, and  
18 discussion of ViaSat's technical information that ViaSat has identified  
19 as confidential.

20 y) Exh. 28 to the Fitzgerald Dec. is a March 17, 2010 PowerPoint  
21 Presentation, which Acacia designated as Highly Confidential –  
22 Attorneys' Eyes Only. The PowerPoint contains discussion of Acacia's  
23 business and technical information, which Acacia has identified as  
24 confidential.

25 z) Exh. 29 to the Fitzgerald Dec. is a February 25, 2013 letter from Ted  
26 Gammell to Bhupen Shah, which Acacia designated as Highly  
27 Confidential – Attorneys' Eyes Only. The letter contains discussion of  
28 ViaSat's business and technical information, which ViaSat has identified

1 as confidential.

2 aa) Exh. 30 to the Fitzgerald Dec. is a March 18, 2013 letter from Bhupen  
3 Shah to Ted Gammell, which Acacia designated as Highly Confidential  
4 – Attorneys’ Eyes Only. The letter contains discussion of Acacia’s  
5 business and technical information, which Acacia has identified as  
6 confidential.

7 bb) Exh. 31 to the Fitzgerald Dec. is a March 13, 2013 email between Raj  
8 Shanmugaraj, Benny Mikkelsen, Christian Rasmussen, and Bhupen  
9 Shah, which Acacia designated as Highly Confidential – Attorneys’  
10 Eyes Only. The email contains discussion of Acacia’s business and  
11 technical information, which Acacia has identified as confidential.

12 cc) Exh. 32 to the Fitzgerald Dec. is an update to the encoder and decoder  
13 specification for the Meru product, which Acacia designated as Highly  
14 Confidential – Attorneys’ Eyes Only. The specification contains  
15 discussion of Acacia’s technical information, which Acacia has  
16 identified as confidential.

17 dd) Exh. 33 to the Fitzgerald Dec. is a November 27, 2012 email between  
18 Christian Rasmussen and Benny Mikkelsen, Bhupen Sha, John  
19 LoMedico, Mehrdad Givechi, Raj Shanmugaraj, and Feng-hai Liu,  
20 along with an attachment, which Acacia designated as Highly  
21 Confidential – Attorneys’ Eyes only. The email contains discussion of  
22 Acacia’s business and technical information, which Acacia has  
23 identified as confidential.

24 ee) Exh. 34 to the Fitzgerald Dec. is a June 11, 2012 email between Gary  
25 Martin and Pierre Humblet, which Acacia designated as Highly  
26 Confidential – Attorneys’ Eyes Only. The email contains discussion of  
27 Acacia’s business and technical information, which Acacia has  
28 identified as confidential.

1 ff) Exh. 35 to the Fitzgerald Dec. is an October 24, 2012 email between  
2 Jon Stahl, Larry Pellach, Kevin Hinckey, Gary Martin, and Peter  
3 Monsen, which Acacia designated as Highly Confidential – Attorneys'  
4 Eyes Only. The email contains discussion of Acacia's business and  
5 technical information, which Acacia has identified as confidential.

6 gg) Exh. 36 to the Fitzgerald Dec. is a July 8, 2009 email between Benny  
7 Mikkelsen, Bhupen Shah, Eric Swanson, Christian Rasmussen, and  
8 Stan Reiss, which Acacia designated as Highly Confidential –  
9 Attorneys' Eyes Only. The email contains discussion of Acacia's  
10 business and technical information, which Acacia has identified as  
11 confidential.

12 hh) Exh. 37 to the Fitzgerald Dec. is a March 20, 2014 email between  
13 Bhupen Shah, John LoMedico, Benny Mikkelsen, Feng-hai Liu, and  
14 Christian Rasmussen, which Acacia designated as Highly Confidential –  
15 Attorneys' Eyes Only. The email contains discussion of Acacia's  
16 business and technical information, which Acacia has identified as  
17 confidential.

18 ii) Exh. 38 to the Fitzgerald Dec. is a June 10, 2010 email between Benny  
19 Mikkelsen, Eric Swanson, and Raj Shanmugaraj, which Acacia  
20 designated as Highly Confidential – Attorneys' Eyes Only. The email  
21 contains discussion of Acacia's business and technical information,  
22 which Acacia has identified as confidential.

23 jj) Exh. 39 to the Fitzgerald Dec. is a November 27, 2012 email between  
24 Raj Shanmugaraj, Benny Mikkelsen, Christian Rasmussen, Bhupen  
25 Shah, and Mehrdad Givehchi, which Acacia designated as Highly  
26 Confidential – Attorneys' Eyes Only. The email contains discussion of  
27 Acacia's business and technical information, which Acacia has  
28 identified as confidential.

1 True and correct unredacted copies of those documents are being lodged  
2 under seal concurrently herewith. Attached hereto is a redacted copy of ViaSat,  
3 Inc.'s Opposition to Acacia Communications, Inc.'s Motion for Summary Judgment  
4 Regarding No Liability, and the Declaration of Kenneth M. Fitzgerald in support of  
5 the Opposition, attaching exhibits 1-4.

### III. Conclusion

7 Therefore, pursuant to ViaSat's obligations under the Stipulated Protective  
8 Order § 1 (Dkt. No. 29), ViaSat respectfully requests that the Court file under seal  
9 (a) portions of ViaSat, Inc.'s Opposition to Acacia Communications, Inc.'s Motion  
10 for Summary Judgment Regarding No Liability, and (b) exhibits 5-39 to the  
11 Declaration of Kenneth M. Fitzgerald.

13 | Dated: February 12, 2018

FITZGERALD KNAIER LLP

By: s/ Kenneth M. Fitzgerald  
Kenneth M. Fitzgerald, Esq.  
Keith M. Cochran, Esq.

-and-

WARREN LEX LLP  
Matthew S. Warren, Esq.  
Patrick M. Shields, Esq.

Attorneys for Plaintiff and Counter  
Defendant ViaSat, Inc.

1                   **CERTIFICATE OF SERVICE**

2                   I certify that today I am causing to be served the foregoing document by  
3 CM/ECF notice of electronic filing upon the parties and counsel registered as  
4 CM/ECF Users. I further certify that am causing the foregoing document to be  
5 served by electronic means via email upon counsel for Acacia Communications, Inc.,  
6 per the agreement of counsel.

7 Dated: February 12, 2018

*s/ Kenneth M. Fitzgerald*

8                   Kenneth M. Fitzgerald, Esq.  
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